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CIRCUMSTANTIAL EVIDENCE IN HOMICIDE CASES.*

In discussing the question of circumstantial evidence in homicide cases, particularity as to collateral details, although interesting and instructive as well as relevant to the thing at hand, is not necessary, and for the sake of time and space will be omitted. In order to realize to the fullest extent the admissibility and weight and sufficiency of circumstantial evidence in homicide cases it might be well to consider the different grades of homicide and the various degrees of murder and manslaughter, and the many circumstances which might be considered in determining the grade or degree of a hypothetical case. In this discussion, however, we have determined to confine the treatment to circumistantial evidence as a means of proving the corpus delicti and attaching the guilt of crime to some particular individual; in other words, we wish to assume a state of facts, to wit, the finding of the dead body of a person whose life seems to have been taken by violence; and then treat the use and efficiency of this kind of evidence from the standpoint of the four questions which naturally arise, which are: Whose body is it; did he destroy his own life; was his death caused by accident; or was his death caused by violence inflicted upon him by some person or persons.

DEFINED AND DISTINGUISHED.

It is necessary, in the first place, to state what circumstantial evidence is, and to distinguish between that and positive or direct evidence. The distinction, then, between direct and circumstantial evidence, is that direct or positive evidence is when a witness can be called to testify to the precise fact which is the subject of the issue on trial; that is, in a case of homicide, that the party accused did cause the death of the deceased. What-

*This article is based on the opinion of Chief Justice Shaw in the famous Webster Case.

ever may be the kind or force of the evidence, this is the fact to be proved. All other evidence is classed as circumstantial evidence.

NECESSITY FOR AND ADMISSIBILITY OF SUCH EVIDENCE.

The generally accepted definition of the phrase "corpus delicti" is that it is the substance of a crime, and that definition would seem to include only the facts that a human being had died as a result of some criminal human agency.

In a great many cases, the corpus delicti, much less the identity of the deceased, can only be shown by circumstantial evidence, and in such cases the accepted rule is that those facts may be implied from circumstances naturally conducing to these conclusions.

Were this not true many a case of murder would go unpunished, because no eye had seen the fatal blow delivered. The mere fact that circumstances always rise to bring home to the murderer his dastardly crime is our best safeguard and surest protection. The body of the dead can be destroyed or successfully hidden from the human eye, and, could the crime not be proven in any other manner than by direct evidence, the murderer could hide his crime and be as secure in his person as the criminal personel of a corporation who find security under the protecting wings of the intengible, unseeable thing which they constitute but which they are not.

After a crime has been proven the guilt therefor must be attached to some person by what we call evidence, either direct or circumstantial.

There is no argument as to the justice of admitting direct evidence to show a defendant's guilt, but in a great many lay minds the use of circumstantial evidence is not received favorably. The common remark is that "I wouldn't hang a yellow dog on circumstantial evidence." Now let us look at the question as to its admissibility, for a moment, in the light of past experience.

Suppose no person was present on the occasion of the death, and, of course, that no one can be called to testify to it. Are we to lay aside the investigation as one unsusceptible of proof? No, we should not do that, for past experience has shown us that circumstantial evidence should be offered in such a case;

that is, that a group of facts may be proved of so conclusive a character as to justify a firm belief of the fact, just as strong and certain as the belief and knowledge on which men are accustomed to act, in relation to the most important things that confront them in their daily life. Hence we very readily see that it would be detrimental to the best interests of our society if such a group of convincing and convicting circumstances could not avail in judicial proceedings for the prosecution of crime.

Just look at this question from the other view a moment. Suppose it was necessary always to have positive evidence, would not many criminal acts, destructive of the peace of the state and subversive of its order and security, go wholly undetected and unpunished? The expediency and justice, therefore, in resorting to circumstantial evidence, if it is a safe and reliable proceeding, is obvious and absolute. Are not crimes secret? Do not men, conscious of criminal purposes, and while executing criminal acts, endeavor to hide their guilt in secrecy and darkness?

Hence we see that it is necessary to use all modes of evidence at hand, provided the evidence may be relied on as leading to safe and satisfactory conclusions; and for society it is well that the relations of things to one another are so linked together that in most cases sufficient evidence is thereby furnished, leading to inferences and conclusions as strong as those arising from direct testimony.

The admissibility of circumstantial evidences must rest much within the discretion of the trial judge, yet great latitude should be allowed in the reception of such evidence, the aid of which is constantly required where direct evidence of the fact is wanting. The more the jury can see of the surrounding facts and circumstances, the more correct their judgment is likely to be.

Whenever the necessity arises for a resort to circumstantial evidence, either from the nature of the inquiry or the failure of direct proof, objections to testimony on the ground of irrelevancy are not favored, for the reason that the force and effect of circumstantial facts usually and almost necessarily depend upon their connection with each other. Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof. And it has

been said that: "The competency of a collateral fact to be used as the basis of legitimate argument is not to be determined by the conclusiveness of the inferences it may afford in reference to the litigated fact. It is enough if these may tend, even in a slight degree, to elucidate the inquiry, or to assist, though remotely, to a determination probably founded in truth."

So any circumstances which tend to throw light upon that which is to be proved should be admitted in evidence. Thus it has been said that it is clearly proper for the government to endeavor to establish, as a circumstance in the case, the fact that another person who was present in the vicinity at the time of the killing could not have committed the crime.

The fact that such evidence has a tendency to show that the defendant was guilty of another offense is not sufficient reason for its exclusion, if otherwise competent.

WEIGHT AND SUFFICIENCY IN GENERAL.

It has been held many times that circumstances without any witness may combine to establish a charge. The same rule applies in all criminal cases. Circumstances, without any witness, when they exist in documentary or written testimony, may combine to establish the charge of perjury; as they may combine, altogether unaided by oral proof, except the proof of their authenticity, to prove any other fact connected with the declarations of persons, or business of human life. That principle is, that circumstances necessarily make up a part of the proofs of human transactions; that such as have been reduced to writing in unequivocal terms, when the writing has been proved to be authentic, can not be made more certain by evidence aliunde. And it appears upon close study of the question that circumstantial evidence is equally as convincing as, if it does not in a great many cases outweigh, positive testimony.

It has been held that, as to the identification of a vessel, circumstantial evidence may be sufficient to convince the "judicial mind." So it has been said that an answer in chancery, although positive, and directly responsive to an allegation in the bill, may be outweighed by circumstances, especially if it be respecting a fact which, in the nature of things, cannot be within the personal knowledge of the defendant.

No doubt strong circumstantial evidence, in cases of crimes committed for the most part in secret, is the most satisfactory of any from whence to draw the conclusion of guilt; for men may be seduced to perjury by many base motives, to which the secret nature of the offense may sometimes afford a temptation; but it can scarcely happen that many circumstances, especially if they be such over which the accuser could have no control, forming together the links of a transaction, should all unfortunately concur to fix the presumption of guilt on an individual, and yet such a conclusion be erroneous.

There are certain advantages and disadvantages attached to this mode of proof. And it is not easy to compare the relative value of the two great classes of evidence.

In a case of circumstantial evidence where no witness can testify directly to the fact proved, it is arrived at by a series of other facts, which by experience have been found so associated with the fact in question that, in the relation of cause and effect, they lead to a satisfactory and certain conclusion; as when footprints are discovered after a recent snow, it is certain that some animated being has passed over the snow since it fell; and, from the form and number of the footprints, it can be determined with equal certainty, whether they are those of a man, a bird, or a quadruped.

Circumstantial evidence, therefore, is founded on experience and observed facts and coincidences, establishing a connection between the known and proved facts and the fact sought to be proved. The advantages are that, as the evidence commonly comes from several witnesses and different sources; a chain of circumstances is less likely to be falsely prepared and arranged, and falsehood and perjury are more likely to be detected and fail of their purpose. The disadvantages are that a jury has not only to weigh the evidence of facts, but to draw just conclusions from them; in doing which, they may be lead by prejudice or partiality, or by want of due deliberation and sobriety of judgment, to make hasty and false deductions; a source of error not existing in the consideration of positive evidence.

The advantage of positive evidence is that it is the direct testimony of a witness to the fact to be proved, who, if he speaks the truth, saw it done; and the only question is, whether he is en-

titled to belief. The disadvantage is that the witness may be false and corrupt, and that the case may not afford the means of detecting his falsehood.

Drawing Inferences from Circumstantial Evidence.

It seems clear from what has been said that great care and caution ought to be used in drawing inferences from proved facts. Conclusions drawn should be fair and natural, and not forced or artificial. Thus if a dwelling is broken into and plundered and there are indications of force and violence upon the door broken open, the inference is that the house was broken open and that the persons who broke in plundered it.

All inferences drawn from the facts should be reasonable and natural, and, to a moral certainty. The law appeals to sound judgment. It is not sufficient that a conclusion is probable, it must be reasonably and morally certain.

However, the positive law in some cases enacts that certain facts proved shall be held to be evidence of another fact. Thus in some cases the law provides that if the mother of a bastard child gives no notice of its expected birth and is delivered in secret, and the child is afterwards found dead, it shall be presumed that she killed the child after birth. The presumption just mentioned seems to be forced and not a natural presumption; at least, it is not conformable to the rule of the common law.

The several essential circumstances upon which the conclusion depends must be fully established by proof; that is, facts from which the main fact is to be inferred. Such facts must be proved by competent evidence, and by the same weight and force of evidence, as if each one were itself the main fact in issue. Under this rule, every circumstance relied upon as material is to be brought to the test of strict proof; and great care is to be taken in guarding against feigned and pretended circumstances, which may be designedly contrived and arranged, so as to create or divert suspicion and prevent the discovery of the truth. These, by care and vigilance, may generally be detected, because things are so ordered by providence; that is, events and their incidents are so combined and linked together, that real occurrences leave behind them vestiges by which, if carefully followed, the true character of the occurrences themselves may be discovered.

A familiar instance is, where a person has been slain by the hands of others, and circumstances are so arranged as to make it appear that the deceased committed suicide. In a case recorded as having actually occurred, the print of a bloody hand was discovered on the deceased. On examination, however, it was the print of a left hand upon the left hand of the deceased. It being impossible that this could have been occasioned by the deceased herself, the print proved the presence and agency of a third person, and excluded the supposition of suicide. So where a person was found dead, shot by a pistol ball, and a pistol belonging to himself was found in his hand, apparently just discharged, death by suicide was indicated. Upon further examination, it appearing that the ball which caused the mortal wound was too large for that pistol, the conclusion was inevitable that suicide in the mode suggested must have been impossible.

Facts necessary to the conclusion must be distinctly and independently proved by competent evidence. But this absolute necessity only applies to the facts necessary to the conclusion sought to be established. Immaterial or relevant correlative facts do not fall within the contemplation of the rule.

It often happens in making out a case on circumstantial evidence that many facts are given in evidence, which are not necessary to the conclusion, but to show that they are consistent with it and not repugnant. They are shown to rebut the contrary presumption.

So we see that facts not necessary to the establishment of the main facts, even though shown erroneously as to the time, place, or the fact itself, do not through such failure of proof prevent the inference from other facts, if of themselves sufficient to warrant it. The failure of such proof does not destroy the chain of evidence; it only fails to give it that particular corroboration, which the fact, if proved, might afford.

Let us take an example from the famous Webster Case: "The fact of the identity of the body of the deceased with that of the dead body, parts of which were found at the medical college, is a material fact, necessary to be established by the proof. Some evidence has been offered, tending to show that the shape, size, height, and other particulars respecting the body, parts of which were found and put together, would correspond with those of

the deceased. But, inasmuch as these particulars would also correspond with those of many other persons in the community, the proof would be equivocal and fail in the character of conclusiveness upon the point of identity. But other evidence was then offered, respecting certain teeth found in the furnace, designated to show that they were the identical teeth prepared and fitted for D. Now, if this latter fact is satisfactorily proved, and if it is further proved to a reasonable certainty, that the limbs found in the vault and the burnt remains found in the furnace were parts of one and the same dead body, this would be a coincidence of a conclusive nature to prove the point sought to be established; namely, the fact of identity."

The court in that case in justifying the introduction of such evidence said that such evidence was given "because it is proof of a fact not repugnant to that of identity, but consistent with it, and may tend to rebut any presumption that the remains were those of any other person; and therefore, to some extent, aid the proof of identification."

Conclusion Rests upon Basis of Facts Proven—Consistency of Facts.

We now see from what has been said that the final conclusion of guilt must rest upon a basis of all essential facts proved, and that such conclusion must be the fair and reasonable conclusion from all such facts taken together. All the facts proved must be consistent with each other, and with the main fact sought to be proved. When a fact has occurred, with a series of circumstances preceding, accompanying, and following it, all of these facts must have been once consistent with each other; otherwise, the fact would not have been possible. Therefore, if any one fact necessary to the conclusion is wholly inconsistent with the hypothesis of the guilt of the accused, it breaks the chain of circumstantial evidence upon which the inference depends; and, however plausible or apparently conclusive the other circumstances may be, the charge must fail.

Of this character is the defense usually called an alibi; that is, that the accused was elsewhere at the time the offense is alleged to have been committed. If this is true—it being impossible that the accused should be in two places at the same time—

it is a fact inconsistent with that sought to be proved, and excludes its possibility. This is a defense often attempted by contrivance, subornation, and perjury. The proof, therefore, offered to sustain it, is to be subjected to a rigid scrutiny, because without attempting to control or rebut the evidence of fact sustaining the charge, it attempts to prove affirmatively another fact wholly inconsistent with it; and this defense is equally available, if satisfactorily established, to avoid the force of positive, as of circumstantial evidence.

In considering the strength of the evidence necessary to sustain this defense, it is obvious that all testimony tending to show that the accused was in another place at the time of the offense is in direct conflict with that which tends to prove that he was at the place where the crime was committed, and actually committed it. In this conflict of evidence, whatever tends to support the one, tends in the same degree to rebut and overthrow the other; and it is for the jury to decide where the truth lies. It would seem, therefore, if the sum total of all of the elementary facts do not point beyond a reasonable doubt to the same conclusion, that the jury should not accept it as the true answer but should so modify it as to give weight and effect to all essential facts upon some basis which bring them into thorough harmony; hence, it may be said that the circumstances taken together should be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion, and producing in effect a reasonable and moral certainty, that the accused, and no one else, committed the offense charged.

It is not sufficient that they create a probability, though a strong one; and if, therefore, assuming all the facts to be true which the evidence tends to establish, they may yet be accounted for upon any hypothesis which does not include the guilt of the accused, the proof fails. It is essential, therefore, that the circumstances taken as a whole and given their reasonable and just weight and no more, should to a moral certainty exclude every other hypothesis.

Relations and Coincidences of Facts.

There are several different relations between facts and coincidences of facts with each other from which reasonable inferences

and conclusions may be drawn. Some of these relations are physical or mechanical, and others are of a moral nature.

Physical or mechanical facts may be so decisive as to leave no doubt in the mind. Thus where the footprints of a man are found on the snow, or mud, that some person has been there is an absolutely certain conclusion, for such footprints are made in no other mode. And if a person is found with a mortal wound in some part of his body the conclusion is that death was caused by the wound, if no other cause is apparent, for our reason and experience teaches us that it was an adequate cause of death. And where the blade of a knife is found broken off in decedent's heart, causing a wound in its nature mortal, if the handle of a knife previously in the possession of the accused and the blade placed together actually fit each other in all the toothed edges of the fracture, no person could doubt that they had belonged together. No two pieces of metal could have broken in such a manner as to produce edges that would so precisely match. And where the pistol was fired near the body, and the wad found in the wound, if the wad on examination was found to consist of paper, constituting part of a printed ballad, and the corresponding part of the same ballad, as shown by the texture of the paper and the purport and form of stanza of the two portions, was found in the pocket of the accused, it tended to identify the accused as the person who loaded and fired the pistol.

The cases just mentioned are those where the conclusion is drawn from known relations and coincidences of a physical character.

There are also relations of a moral nature, from which such conclusions may be legitimately drawn. Thus the ordinary feelings, passions, and propensities under which persons act, are facts known by observation and experience; and because of the uniformity of their operation, a conclusion may be safely drawn that if a person has acted in a particular manner, he has done so under the influence of a particular motive. As a matter of fact, this is the only mode in which a large class of crimes can be proved; that is, a crime, which consists not merely in an act done, but in the motive and intent with which the guilty party was actuated in the commission thereof. Such criminal intent may be inferred, and often is safely inferred, from his conduct

and external acts. And as a matter of fact it is usually so inferred for the intent is only directly known to the accused unless he makes declarations on the subject, which he is not likely to do if his purpose is criminal.

ABSENCE OF EXCULPATORY EVIDENCE.

Where the facts which are shown are of sufficient strength tending to criminate the accused, the absence of evidence tending to a contrary conclusion is to be considered. But the absence of exculpatory evidence and rebuttal matter is not alone entitled to much weight, for the priceless rule of our criminal law, and our safest guarantee of justice demands that the burden of proof lie on the accuser to make out the whole case by substantive evidence.

SUPPRESSION OF EVIDENCE AND SUGGESTION OF FALSEHOOD.

If the evidence is suppressed or there is a suggestion of falsehood arising therefrom, the reason of the rule no longer exists and necessity calls for further consideration. Thus if reasonably strong proof is produced, which tends to support the charge, it being apparent that the accused could offer evidence of all the facts and circumstances as they existed, and show the truth, if such be the case that the suspicious circumstances can be accounted for consistently with his innocence, and he fails to offer such proof, the natural conclusion is that the proof would tend to sustain the charge made against rather than to show his innocence.

However, such a rule should only be applied in cases where it is manifest that such proofs are in the power of the accused, and not accessible to the prosecution. Great caution should be had in drawing such conclusion for fear of irremediable error and injustice. Under this class would be considered all attempts on the part of the accused to suppress evidence, to suggest false and deceptive explanations, and to cast suspicion, without just cause, on other persons; all or any of which tend somewhat to prove consciousness of guilt, and, when proved, to exert an influence against the accused.

But such attempts at deception should not be given too much importance nor pressed too urgently. An innocent man, if placed

by circumstances in a condition of suspicion, may resort to all forms of deception in the hope of avoiding the force of such circumstances and conditions as tend to condemn him.

And there is one very prominent case often mentioned, of a man convicted of the murder of a young girl who had suddenly disappeared under circumstances which created a strong suspicion of her murder. The accused endeavored to impose on the court by presenting another girl. This deception being discovered, operated strongly against him, but the actual reappearance of the girl alive conclusively demonstrated that she had not been murdered.

INFERENCES FROM INDEPENDENT SOURCES.

Much has been said on the question of inferences being drawn from independent sources, which tend to support the same conclusion. The true rule seems to be that inferences when drawn from independent sources, different from each other, but tending to the same conclusion, not only support each other, but do so with an increased weight.

Just look at a case previously considered and it will be seen, readily, that such a rule is founded on wisdom. Where the wad of the pistol consisted of part of a ballad, the other part being in the pocket of the accused, it is not absolutely conclusive that the accused loaded and wadded the pistol himself, for it might be that he picked up the piece of paper in the street, or in the field near the scene of the murder. But where it is proven by an independent witness that the accused purchased the ballad from him, and by another witness that he purchased the pistol from another shop, the circumstances from different and independent sources, bearing upon the same conclusion, have an increased weight in establishing the proof of the fact, and more reasonably justify the conclusion.

R. C. WALKER.

Charlottesville, Va.